



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

FOO/142306

PRELIMINARY RECITALS

Pursuant to a petition filed July 13, 2012, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 16, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether there are errors in the calculation of Petitioner's FS allotment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Katherine Way
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has received FS benefits since at least July, 2011 as follows:

\$397	July 2, 2011
\$349	July 21, 2011
\$338	September 2, 2011

\$323/month October 2, 2011 and November 2, 2011
 \$526 December 2, 2011 and January 2, 2012
 \$398 February 22, 2012
 \$199/month April 2, 2012 – July 2, 2012

3. On January 10, 2012, the agency issued a Notice of Decision to the Petitioner notifying her that her FS benefits would be reduced from \$526/month to \$410/month effective February 1, 2012. This was based on a household of three, gross monthly household income of \$1,163, rent of \$695/month and net adjusted income of \$385.75.
4. On February 23, 2012, the agency issued a Notice of Decision to the Petitioner notifying her that she would continue to get FS benefits. This notice indicates that she is receiving FS benefits of \$199/month based on gross household income of \$1,749.25. This income calculation included \$272/month of earned income from School District of West Allis.
5. On July 16, 2012, the agency issued a Notice of Decision to the Petitioner notifying her that her monthly FS benefits would increase from \$199 to \$300 based on gross household income of \$1,451.96.
6. On July 13, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

To receive FS benefits, a household must have income below gross and net income limits. 7 CFR §273.9(b) and FS Wisconsin Handbook (FSH) 1.1.4. The agency must budget all income of the FS household, including all earned and unearned income. 7 CFR 273.9(b); FSH 4.3.1.

The Petitioner testified that she does not dispute the agency's calculations regarding her FS allotment in the July 16, 2012 Notice of Decision. She testified that she believes the agency may have incorrectly determined her allotments previously because the agency has used her income from the West Allis School District in determining eligibility and allotments even though she has not worked at the school district for almost two years. The Notice of February 23, 2012 is evidence that the agency improperly included that income in determining the Petitioner's benefits. The Petitioner also testified that there have been changes to her CS payments and she has not received any payments since June 27, 2012.

The agency was not prepared to present information about the Petitioner's previous FS determinations. However, the Petitioner did present some evidence that the agency may have erred in the current decision regarding child support payments as well as previous decisions regarding income from the West Allis School District.

Errors in calculations of FS eligibility and allotments are correctable for a twelve month period prior to the discovery of an error. FSH 7.4.1.1.

Based on the evidence, I cannot determine if the Petitioner's FS benefits have been correctly determined for July, 2012 or for the twelve month period prior to July. Therefore, I will order the agency to review the Petitioner's case file and information for the twelve months prior to the appeal (July, 2011 – July, 2012) to determine if it properly calculated the Petitioner's income and specifically related to earned income from the West Allis School District and child support.

CONCLUSIONS OF LAW

The available evidence does not demonstrate that Petitioner's FS benefits were correctly determined for the period of July, 2011 – July, 2012.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with instructions to re- determine Petitioner's FS eligibility and allotments for the period of July, 2011 – July, 2012. The agency shall issue a Notice of Decision to the Petitioner with the results of that redetermination. If the Petitioner is owed FS benefits that she did not receive, the benefits shall be issued. All of these actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

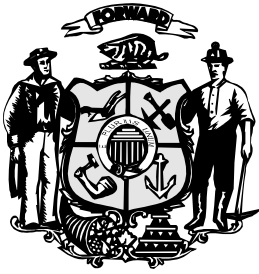
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 7th day of September, 2012

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

c: Milwaukee Enrollment Services - email
Department of Health Services - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 7, 2012.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability